

VIRGINIA:

At a special-called meeting of the Board of Supervisors of the County of Northampton, Virginia, held at the Board Room of the County Administration Building, 16404 Courthouse Road, Eastville, Virginia, on the 19th day of January, 2016, at 5:30 p.m.

Present:

H. Spencer Murray, Chairman,

Robert G. Duer

Larry LeMond, Vice Chairman

Granville F. Hogg, Jr.

Oliver H. Bennett

The meeting was called to order by the Chairman, who noted that this was a special-called meeting for the purpose of:

Conduct Closed Session in accordance with Section 2.2-3711 of the Code of Virginia of 1950, as amended:

Paragraph 7: Consultation with legal counsel and briefings by staff members, consultants, or attorneys pertaining to actual or probable litigation, and consultation with legal counsel employed or retained by the Board of Supervisors regarding specific legal matters requiring the provision of legal advice by such counsel.

*Discussion of zoning text & zoning map amendment appeal filed by Ken Dufty – request for continuance*

Any other actions as required related to the above item

Closed Session

Motion was made by Mr. LeMond, seconded by Mr. Duer, that the Board enter Closed Session in accordance with Section 2.2-3711 of the Code of Virginia of 1950, as amended:

Paragraph 7: Consultation with legal counsel and briefings by staff members, consultants, or attorneys pertaining to actual or probable litigation, and consultation with legal counsel employed or retained by the Board of Supervisors regarding specific legal matters requiring the provision of legal advice by such counsel.

*Discussion of zoning text & zoning map amendment appeal filed by Ken Dufty – request for*

*continuance*

*Certain aspects of the proposed zoning ordinance amendments voted on by the Board at the last meeting*

*Galloway assessments suit*

All members were present and voted “yes.” The motion was unanimously passed.

Mr. Duer left the meeting at 6:30 p.m.

After Closed Session, the Chairman reconvened the meeting and said that the Board had entered the closed session for that purpose as set out in paragraph 7 of Section 2.1-3711 of the Code of Virginia of 1950, as amended. Upon being polled individually, each Board member confirmed that this was the only matter of discussion during the closed session.

At this time, the Board reviewed three memoranda from legal counsel and staff relative to “Comments and Questions with Respect to Attachment ‘A’ to Board’s January 12, 2016 Resolution”. Said memoranda and the Board’s directives concerning same are outlined below:

Comments and Questions from P. Stith with respect to Attachment “A” to Board’s January 12, 2016, Resolution

**Districts:**

- If some of the districts are going to be renamed, the nomenclature should be consistent and reflect the new district. For example:

Hamlet/Residential (H/R)

Existing Subdivision/Residential:

Existing Subdivision/Residential – Rural Village Residential (ES/R-RVR)

*The Board concurred with this staff recommendation.*

- The new intent of the Town Edge district does not appear to be consistent with the Comprehensive Plan with the addition of “existing farming activities”.

*It was the consensus of the Board to leave in the proposed language as included in the January 12, 2016 Resolution.*

- Wherever there is a reference to the “2009 Comprehensive Amendments” the actual date of adoption or the effective date should be inserted, either October 20, 2009 (adopted) or October 21, 2009 (effective).

*The Board concurred with this staff recommendation.*

- There are additional districts, overlay and floating, included in the 2009 Ordinance:  
**Overlay Districts:** Historic Preservation, Floodplain Overlay, Airport Protection, Chesapeake/Atlantic Preservation, and US 13 Corridor  
**Floating Districts:** Mobile Home Park, Planned Industrial, Existing Planned Rural Village and Solar Energy.

Staff is asking for confirmation to include all of these with no additional changes to the names or intents of these districts.

*The Board concurred that all of the Overlay Districts and Floating Districts, with the exceptions of the Floodplain Overlay District, the Chesapeake/Atlantic Preservation Overlay District and the Planned Industrial Floating District, should be included in the proposed new draft document.*

#### **Agritourism:**

Memo from Planning Commission attached.

*It was the consensus of the Board that additional thought needed to be given to the Agritourism memo. This item will be more fully discussed at the January 25<sup>th</sup> work session.*

*It was the consensus of the Board to delete the phrase, “in an agriculturally classified district” as shown on page 2 of 20 within the definition of “Agritourism”.*

#### **CAFOs:**

- Clarification needed if the proposed setbacks apply to all AFO and CAFOs (small, medium and large) or if there are different setbacks for different types.
- As drafted it appears any operation with less than certain number of animals is considered a Small CAFO. Staff would recommend setting a minimum for small CAFOs.
- There are zero parcels that would meet the setbacks proposed in the resolution and have any acreage available to have a CAFO or AFO. There are a few parcels that have some acreage but it is minimal and not enough to have a CAFO or AFO.
- Staff notes there are many common farm animals that are missing from Appendix D which include, but are not limited to, goats, turkeys, llamas, alpacas, and rabbits.

*It was the consensus of the Board that additional thought was needed relative to whether the proposed setbacks applied to all of the various sizes of CAFOs and AFOs, as well as*

*the need for a minimum size of CAFOs and AFOs. The Board agreed to include the omitted common farm animals (including the Latin terminology) as referenced above .*

\* \* \* \* \*

Comments and Questions from Melissa Kellam with respect to Attachment “A” to Board’s January 12, 2016, Resolution

Item #1

Page 2 of 20 proposes to delete the 2009 zoning code definition for accessory living unit and replace it with a new definition called accessory dwelling. Also, page 16 of 20 proposes to insert performance standards for accessory dwellings into the 2009 zoning code. Staff is seeking the Board’s direction as to whether or not these changes will also be made to the 2000 zoning code. Because the 2009 zoning code includes existing subdivision districts which require these districts to use the 2000 zoning code, making these changes in the 2009 zoning code as well as the 2000 zoning code should be considered. The change in terminology is a good change, because the term accessory dwelling is a more commonly used zoning term and including the revised terminology and performance standards in both the 2009 and 2000 will help to unify the accessory dwelling regulations.

*It was the consensus of the Board to make the referenced changes in the 2000 zoning code as well, in order to be consistent across all documents.*

Item #2

Page 6 of 20 (D) (4) includes the term flood prone. Is it the intention of the Board to use the definition of flood prone from Chapter 159: Floodplain Management which is very general term defined as follows: “floodplain or flood-prone area – any land area susceptible to being inundated by water from any source”, or does the Board want to use a term such as “special flood hazard areas” which is a specific term with areas located on the FEMA maps.

*It was the consensus of the Board to utilize the “special flood hazard areas” terminology.*

Item #3

Page 3 of 20 and page 5 of 20 include the term “working farm” in the definition and performance standards for agritourism. Should a definition for “working farm” be developed or should the term “agricultural operation”, which is defined by the VA Code, be used in its place. In the VA Code, agricultural operation means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

*It was the consensus of the Board to utilize the term “agricultural operation” in place of “working farm” in all instances.*

\* \* \* \* \*

Comments and Questions from B. Leatherbury with respect to Attachment “A” to Board’s January 12, 2016, Resolution

**1. Page 1 Of 20: Intent and Purpose:**

Virginia Code §15.2-2283 states that a purpose of a zoning ordinance is to “encourage economic development activities that provide desirable employment and enlarge the tax base”; the proposed draft adds “as directed by the Comprehensive Plan”.

The Code of Virginia provides that “ Such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in §62.1-255.” The draft provides that a purpose is to “Protect surface water and ground water by means consistent with applicable state water quality standards and the County’s Comprehensive Plan.

The Comprehensive Plan is a guide to be considered by the Board in making decisions, but it is not a document that mandates or binds the actions of the Board with respect to economic development and employment. With respect to groundwater, the State mandates a five year groundwater plan. DEQ regulations, not the local Comprehensive Plan, govern the groundwater plan.

*It was the consensus of the Board to strike the words “as directed by the Comprehensive Plan” in both areas as noted above.*

**2. Page 12 of 20: Powers of the Zoning Administrator**

A. Code 15.2-2286(a)(4) provides that the Zoning Administrator “shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance.” The Code contemplates the ZA to be an enforcement officer of the governing body who can speak through orders which can be appealed. The Board’s amendment seems to contemplate somewhat restricted authority and a primary role of public legal adviser.

B. The 24 hour notice of intent should be deleted. An administrative warrant section as contemplated by Va. Code § 15.2-2286(A)15 should be included. The Zoning Administrator should have authority to obtain such warrants. Here is the language in the 2015 Ordinance:

(D) Inspection Warrants. The Zoning Administrator or his / her agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this Chapter has occurred, request that the magistrate or court grant the Zoning Administrator or his / her

agent an inspection warrant to enter a dwelling, structure, building or upon land for the purpose of determining whether violations of this Chapter exist. The Zoning Administrator or his / her agent shall make a reasonable effort to obtain consent from the owner or tenant of the dwelling, structure, building or land before seeking the issuance of an inspection warrant under this section.

State law reference: Va. Code §15.2-2208; 15.2-2209; 12.2-2286 (A) (5)

*It was the consensus of the Board to delete the 24-hour notice of intent statement and to include an administrative warrant section as recommended by counsel.*

[Consider taking a look at the all the enforcement provisions of the 2015 ordinance; they are superior in many respects, easier to administer and received no public criticism.]

C. The draft, specifically ¶7 on page 12 of 20 would remove other powers and duties of the ZA allowed by both the Code of Virginia and by the 2009 and 2000 ordinances, which include but may not be limited too, the duties and following sections:

- (1) Implementing performance based standards
- (2) Enforcing supplemental regulations
- (3) Modifying setbacks under specific conditions
- (4) Permitting under certain conditions encroachments into the buffer as waivers

These powers and duties are addressed by these sections of the codes:

2009 Zoning Code

Supplemental Performance Standards 154.100 – 116C

Supplemental Regulations 154.140 – 148

Chesapeake / Atlantic Preservation District (CAP) 154.164

Off-street Parking and Loading 154.205 – 213

2000 Zoning Code

Performance Standards 154.100 – 112

Modifications of District Regulations 154.140 – 147

Chesapeake / Atlantic Preservation District (CAP)

Off-street Parking and Loading 154.205 – 213

D. The powers given the ZA in the “violations” section of the 2009 Ordinance, (154.998) are broader than those enumerated in the Attachment to the Board’s resolution and would presumably be negated by the language of ¶7 on page 12 of 20. Furthermore, the 2009 Ordinance allows the ZA to impose civil penalties for violations. (154.999(B)).

*It was the consensus of the Board that additional review time was needed relative to the powers and duties of the Zoning Administrator as referenced in paragraphs A, C and D above.*

3. The ZA is probably not the person to maintain and make available records for public inspection. The Virginia Public Records Act, cited in the draft, deals with the management, preservation and destruction of public records, not with public inspection of those records. Public inspection of records is governed by the Virginia Freedom of Information Act and it would be wise practice to continue to centralize FOIA responses within the County and to consult with the County Attorney regarding such responses.

With respect to compliance with the Virginia Public Records Act, Va. Code § 42.1-85(C) provides in pertinent part:

Each . . . political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. \* \* \*  
Designation of a records officer for political subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

Janice Williams has been designated the Records Officer for Northampton County.

*The Board indicated that it needed additional review item on this item.*

4. The 2000 and 2009 Ordinances both allow PUDs, and the Bayview development is mapped as a PUD. Directions?

*It was the consensus of the Board that the Bayview Development continue to be mapped as a Planned Unit Development, but that there be no additional provisions for PUDs.*

5. Floodplain: We have an up-to –date Floodplain Ordinance, Chapter 159 of the County Code. Should floodplain regulations in the 2009 ordinance be deleted?

*It was the consensus of the Board to retain the stand-alone Floodplain Ordinance (Chapter 159 of the County Code) as adopted by the Board in 2014.*

6. The newly enacted Chesapeake/Atlantic Preservation provisions differ from what is contained in the 2009 Ordinance. The differences relate to required stormwater provisions. May we simply import the new legislation into the 2009 Ordinance?

*It was the consensus of the Board that the 2015 zoning code language be retained within the proposed new draft ordinance.*

7. Signs. The sign provisions of 2015 and 2009 differ significantly. Legal has addressed 2015 in the aftermath of the Supreme Court’s 2015 decision in the case of Reed v. Town of Gilbert Arizona, wherein the Court examined whether or not a locality's sign ordinance that assigns different size and

posting requirements based on the type of noncommercial speech displayed violates the First Amendment of the U.S. Constitution. Legal has not addressed the 2009 ordinance. Directions? There were no public comments at all regarding the sign ordinance revisions.

*It was the consensus of the Board that legal counsel be directed to revise the 2009 zoning code language to make it constitutional.*

Other:

In review of the Board's January 12, 2016 Resolution and 20-page listing of proposed amendments to the 2009 zoning ordinance code, the Board agreed to remove the word "existing" in the phrase "existing farming activities" as used in the Village-1 zoning district intent statement (shown on page 6 of 20), and the Town Edge-1 zoning district intent statement (shown on page 8 of 20).

The Board also agreed to delete the sentence, "It is the intent of Northampton County to provide lawfully conforming status to parcels mapped as Existing Business District on the adoption date of the 2009 Comprehensive Amendments to this chapter.", as shown under the Existing Business District (page 9 of 20) and Existing Industrial District (page 10 of 20).

The Board also agreed to delete the use "Dance Halls to 3000 sq ft" as a use allowed in the Existing Industrial District (shown on page 19 of 20).

The Board agreed that legal counsel will draft revised language for proposed Section 154.116 Standards for Wind Energy Facilities, Wind Energy Test Facilities, and Wind Turbines, Large and Utility-Scale specific to setback requirements from adjacent property lines (page 14 of 20).

With regard to the draft zoning adoption calendar as recommended by staff, it was the consensus of the Board to hold the joint public hearing, tentatively scheduled for March 9, 2016, at Northampton High School in Eastville. It was noted that the draft advertisement for the proposed amendments cannot be completed until the remaining questions left outstanding in

tonight's discussion are answered. The Board discussed and will need to set the timeline for Planning Commission review.

Adjourn

Motion was made by Mr. LeMond, seconded by Mr. Hogg, that the meeting be adjourned. All members were present and voted "yes." The motion was unanimously passed.

The meeting was adjourned.

\_\_\_\_\_CHAIRMAN

\_\_\_\_\_ COUNTY ADMINISTRATOR